

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EARL KELLEY)	
Claimant)	
VS.)	
)	Docket Nos. 201,362 & 201,363
THE BOEING COMPANY - WICHITA)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
AMERICAN MANUFACTURERS MUTUAL INS. CO.)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent, The Boeing Company - Wichita, and its insurance carrier, Kemper Insurance Company, appeal from a preliminary Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 8, 1995.

ISSUES

The sole issue to be considered on appeal is whether claimant has established an accidental injury arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the preliminary Order should be affirmed.

Claimant seeks medical treatment for carpal tunnel syndrome which he alleges arose out of and in the course of his employment for the respondent. Claimant worked for respondent as a tool designer, drafting tool designs on a drawing board. Claimant's testimony and respondent's medical records indicate that he developed and was treated for carpal tunnel syndrome in 1992 and 1993. No surgery was performed and he was released without restrictions to return to his regular work with respondent. The evidence, including respondent's medical records, also establishes that claimant's carpal tunnel symptoms worsened in April of 1995. Claimant retired from his employment with respondent in June of 1995. Claimant acknowledges that he did not retire because of the carpal tunnel syndrome.

Shortly after retiring from respondent, claimant started working for Western Auto in Olathe, Kansas. The work at Western Auto was not what he had expected because it involved lifting and carrying batteries and tires. After falling and injuring his low back claimant quit his work at Western Auto. Claimant worked at Western Auto for approximately one month for 25 to 30 hours each week.

Respondent contends that the evidence fails to establish that claimant suffered an injury in the course of his employment during the year 1995 as alleged. Respondent also argues that claimant's carpal tunnel syndrome was aggravated in the course of his employment with Western Auto; accordingly, Western Auto should be responsible for current medical treatment.

The Appeals Board finds first that the evidence does establish claimant's carpal tunnel syndrome worsened in April of 1995 while working for respondent. He reported a worsening to respondent and sought treatment at that time. Respondent's contention that claimant's condition was aggravated by his employment at Western Auto presents a close question from the evidence presented at this time. Claimant testifies first that his condition worsened at Western Auto and then repeatedly testifies that his carpal tunnel condition did not worsen from his employment at Western Auto. He testifies that it would flare up from time to time and was unpredictable but did not generally worsen from his employment at Western Auto. At this time there is no medical evidence indicating that the condition worsened at Western Auto. From the evidence presented, the Appeals Board finds it was appropriate to award medical benefits for claimant's carpal tunnel syndrome to be provided by respondent.

The circumstances of this case are not precisely controlled by Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994) because claimant did not leave his employment with respondent because of the carpal tunnel syndrome. It is, therefore, appropriate to rely on other factors to identify the date of accident. Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995). As the above summary of evidence indicates, the Appeals Board notes the claimant's condition did worsen in April of 1995, and he left employment for respondent in June 1995. Under these circumstances the Appeals Board does not consider it necessary to find a date of accident during the last

employment, the employment at Western Auto, and finds instead claimant did suffer accidental injury arising out of and in the course of employment for respondent. The Appeals Board, therefore, concludes that the Order should be affirmed in all respects.

The Appeals Board notes parenthetically that there was a change in insurance for respondent effective January 1, 1994. Respondent's appeal does not relate specifically to which insurance carrier provides benefits but rather to whether there was an injury arising out of and in the course of employment with respondent as alleged.

WHEREFORE, the Appeals Board finds the preliminary Order of Administrative Law Judge Nelsonna Potts Barnes should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Frederick L. Haag, Wichita, KS
Chris Cole, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director